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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	Cases 3:11-cr-00022-01-RJB
)	3:11-cr-00022-02-RJB
Plaintiff,)	3:11-cr-00022-03-RJB
)	
vs.)	Anchorage, Alaska
)	Monday, June 18, 2012
FRANCIS SCHAEFFER COX,)	2:31 o'clock p.m.
COLEMAN L. BARNEY, and)	
LONNIE G. VERNON,)	
)	
Defendants.)	

TRIAL BY JURY - DAY 25/VERDICT

VOLUME 25

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ROBERT J. BRYAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	STEVEN E. SKROCKI YVONNE LAMOUREUX Assistant U.S. Attorneys Office of the U.S. Attorney 222 West 7th Avenue, #9, Room 253 Anchorage, Alaska 99513-7567 (907) 271-5071
For the Defendant Francis Schaeffer Cox:	NELSON TRAVERSO Nelson Traverso Law Office 312 5th Avenue Fairbanks, Alaska 99701 (907) 457-3307
For the Defendant Coleman L. Barney:	TIM DOOLEY Law Office of Tim Dooley 921 West 6th Avenue, Suite 200 Anchorage, Alaska 99501 (907) 279-7329

1 APPEARANCES (Continued):

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ANCHORAGE, ALASKA - MONDAY, JUNE 18, 2012

(Call to Order of the Court at 2:31 p.m.)

(Defendants present; jury not present)

THE CLERK: All rise. His Honor the Court, the United States District Court for the District of Alaska is now in session, the Honorable Robert J. Bryan presiding.

THE COURT: Please be seated. Well, we got a note that says: "The jury has become deadlocked on one charge." I don't know if that means that they have reached a verdict on all other charges or not. And it appears to me that I should inquire of them as to whether there's a reasonable chance that they could reach a verdict within a reasonable time on all charges. And I probably should also ask them if they have reached a verdict on the other charges at this point, so we have a basis to determine what our best approach is.

I'm not a fan of dynamite charges, and -- but after we talk to the jury we can discuss that as well, depending on their responses to the questions that I'll ask them. Okay.

MS. LAMOUREUX: Your Honor, the government's preference would be to advise them of an *Allen* charge as set forth in the pattern instruction 7.7, before inquiring of them at all. We definitely don't want to inquire them as to numbers, where they would stand, or ask them any questions along those lines. And the concern is that if the parties decided that if an *Allen*

1 charge was appropriate after you had inquired of them, then it
2 may have more of a coercive effect than if we just simply
3 instructed them --

4 THE COURT: Well, I'm not inclined --

5 MS. LAMOUREUX: -- at this point --

6 THE COURT: -- to give them an *Allen* charge at all. I
7 think it's a bad practice in my judgment, and as the committee
8 indicated, the committee recommends caution whether to give a
9 supplemental instruction. I guess it -- you can usually tell
10 from inquiry whether they should negotiate further or not,
11 whether they should -- so I'm not inclined to do that at this
12 point. Okay. Bring the jury in. We don't have a --

13 THE CLERK: Nobody over there?

14 THE COURT: -- bailiff over there. (Pause) The reason
15 that we have adopted in the Pattern Jury Instruction Committee
16 7.1 and the language it's in was to cover the information in an
17 *Allen* charge in all the instructions, without putting any
18 pressure on them.

19 (Jury present at 2:35 p.m.)

20 THE COURT: Okay, folks, we have your note that
21 indicates you have become deadlocked on one charge. Before I
22 ask you any questions, I want to caution you that you should
23 not tell anyone, including me, how the jury stands on any vote,
24 numerically or otherwise, and I would ask that you simply
25 answer the questions that I will ask without saying anything

1 further.

2 My first question is who is the foreperson of the jury?
3 Okay, (states name of juror no. 6), my question is to you. In
4 your opinion, is the jury unable to agree on a verdict as to
5 one or more counts?

6 THE FOREPERSON: Yes.

7 THE COURT: And if any of you disagree with (states
8 name of juror no. 6), please tell me now. Are all of you in
9 agreement with her answer? Is there -- (states name of juror
10 no. 6), is there a reasonable probability that the jury can
11 reach a unanimous verdict on all charges if you deliberate
12 further?

13 THE FOREPERSON: No.

14 THE COURT: And again, if any of you disagree with
15 (states name of juror no. 6)'s answer, please tell me now. And
16 this note indicated a deadlock on one charge. Is it only one
17 charge that you're unable to agree on?

18 THE FOREPERSON: Yes.

19 THE COURT: All right. Let me ask you to return to the
20 jury room and continue your deliberations while we discuss your
21 answers. Thank you

22 (Jury not present at 2:38 p.m.)

23 THE COURT: Let me hear from the government first.

24 MS. LAMOUREUX: The government would request at this
25 time that the Court take a partial verdict from the jury.

1 THE COURT: Mr. Traverso?

2 MR. TRAVERSO: Let me consult with Mr. Cox.

3 THE CLERK: Microphone, please.

4 (Pause)

5 MR. TRAVERSO: Your -- maybe -- perhaps you might want
6 to inquire of other --

7 THE COURT: I'm sorry?

8 MR. TRAVERSO: Perhaps you might want to inquire of
9 other counsel while Mr. Cox deliberates on this.

10 MR. DOOLEY: Your Honor, I'd prefer that they reach a
11 verdict, but I guess everybody does. And I'll take a partial
12 verdict.

13 MS. HADEN: We'll take a partial verdict, Your Honor.

14 (Pause)

15 MR. TRAVERSO: It's Mr. Cox's preference that the jury
16 continue to deliberate --

17 THE COURT: I'm sorry, louder, please.

18 MR. TRAVERSO: It's Mr. Cox's preference that the jury
19 continue to deliberate.

20 (Pause)

21 THE COURT: Well, it's perhaps an art form to know when
22 a jury is deadlocked. This jury has been out for, let's see,
23 basically two full days and a little more. I have commented to
24 people that this jury has been one of the most engaged in a
25 complex trial that I have seen. They appear to have taken

1 their job seriously and worked very hard during the trial, and
2 as early questions from them indicated during deliberations,
3 they worked very hard to understand the instructions and the
4 evidence. They appeared to me in the answers given in our
5 just -- short court appearance to be pretty firm in their
6 conclusion that further deliberations would not be productive.
7 And they apparently have only one charge that they have not
8 agreed on.

9 I have indicated privately to staff that I -- it would
10 not surprise me if they were hung on some counts, and it
11 appears that that is the case. So I guess this doesn't come as
12 a big surprise to me in light of the events of the trial.

13 I think the best practice at this point, based on those
14 considerations and what I observed as the jury was responding
15 to my questions, is to accept the verdicts that they have
16 reached and declare a mistrial on whatever it is they can't
17 agree on. And that's my judgment. And so I would ask Denali
18 to ask the jury to complete the verdict form insofar as they
19 are able, and let us know when they're ready to return to
20 court, all right? And we'll be at recess and they tell us
21 they're ready.

22 THE CLERK: All rise. This matter stands in recess.

23 (Court recessed at 2:48 p.m., until 3:04 p.m.)

24 (Jury not present)

25 THE CLERK: All rise. His Honor the Court, this United

1 States District Court is again in session.

2 THE COURT: Please be seated. I was going to say one
3 other thing in regard to the decision to take what verdicts
4 they have, and that is that it's in my view very hard on jurors
5 at this stage of the game to be told they haven't done their
6 work and that they should do more. Bring in the jury, please.

7 I would ask the audience to -- there's a lot of work we
8 have to do yet in taking the verdict, and I would appreciate it
9 if you would not make any outbursts or agreements or
10 disagreements with the verdict.

11 (Jury present at 3:06 p.m.)

12 THE COURT: All right. (States name of juror no. 6), I
13 gather that you have reached a verdict on all except for one
14 charge or count. Is that correct?

15 THE FOREPERSON: Yes, Your Honor.

16 THE COURT: And have you filled in the verdict form to
17 reflect the findings of the jury?

18 THE FOREPERSON: Yes, Your Honor.

19 THE COURT: Will you hand the verdict form to the
20 bailiff, please? (Pause) All right. There are 21 different
21 verdicts here. And I would ask that you listen carefully.
22 And, ladies and gentlemen, at the conclusion of reading the
23 verdict, I will be polling the jury and ask each of you in turn
24 if these are your verdicts, your individual verdicts, and if
25 they are the verdicts of the jury.

1 Paragraph 1. We, the jury, find the Defendant Francis
2 Schaeffer Cox guilty of conspiracy to possess unregistered
3 silencers and/or destructive devices, as charged in Count 1 of
4 the indictment.

5 Two. We, the jury, find the Defendant Coleman L.
6 Barney guilty of conspiracy to possess unregistered silencers
7 and/or destructive devices, as charged in Count 1 of the
8 indictment.

9 Three. We, the jury, find the Defendant Lonnie G.
10 Vernon guilty of conspiracy to possess unregistered silencers
11 and/or destructive devices, as charged in Count 1 of the
12 indictment.

13 Four. We, the jury, find the Defendant Francis
14 Schaeffer Cox guilty of possession of unregistered destructive
15 devices, that is, a combination of parts either designed or
16 intended for use in converting any device into a destructive
17 device and from which a destructive device may be readily
18 assembled, specifically for hand grenades, as charged in Count
19 2 of the indictment.

20 Five. We, the jury, find the Defendant Coleman L.
21 Barney not guilty of possession of unregistered destructive
22 devices, that is, a combination of parts either designed or
23 intended for use in converting any device into a destructive
24 device and from which a destructive device may be readily
25 assembled, specifically for hand grenades, as charged in Count

1 2 of the indictment.

2 Six. We, the jury, find the Defendant Francis
3 Schaeffer Cox guilty of possession of an unregistered silencer,
4 as charged in Count 3 of the indictment.

5 Seven. We, the jury, find the Defendant Francis
6 Schaeffer Cox guilty of possession of an unregistered machine
7 gun, as charged in Count 4 of the indictment.

8 Eight. We, the jury, find the Defendant Francis
9 Schaeffer Cox guilty of illegal possession of a machine gun, as
10 charged in Count 5 of the indictment.

11 Nine. We, the jury, find the Defendant Francis
12 Schaeffer Cox guilty of making a silencer, as charged in Count
13 6 of the indictment.

14 Ten. We, the jury, find the Defendant Francis
15 Schaeffer Cox not guilty of carrying a firearm, that is, a
16 semiautomatic pistol, during and in relation to a crime of
17 violence, that is, the conspiracy charged in Count 1, as
18 charged in Count 7 of the indictment.

19 Eleven. We, the jury, find the Defendant Coleman L.
20 Barney not guilty of carrying a firearm, that is, one or more
21 semiautomatic pistols, during and in relation to a crime of
22 violence, that is, the conspiracy charged in Count 1, as
23 charged in Count 8 of the indictment.

24 Twelve. We, the jury, find the Defendant Coleman L.
25 Barney guilty of possession of an unregistered destructive

1 device, that is, a 37-millimeter launcher loaded with a
2 hornet's nest antipersonnel round, as charged in Count 9 of the
3 indictment.

4 Thirteen. We, the jury, find the Defendant Francis
5 Schaeffer Cox guilty of possession of an unregistered
6 destructive device, that is, a hornet's nest antipersonnel
7 round and associated 37-millimeter launcher, as charged in
8 Count 10 of the indictment.

9 Fourteen. We, the jury, find the Defendant Coleman L.
10 Barney not guilty of possession of an unregistered destructive
11 device, that is, four hornet's nest antipersonnel rounds and
12 two associated 37-millimeter launchers, as charged in Count 11
13 of the indictment.

14 Fifteen. We, the jury, find the Defendant Francis
15 Schaeffer Cox guilty of conspiracy to murder officers and
16 employees of the United States, as charged in Count 12 of the
17 indictment.

18 Number 16 is left blank, which is the charge against
19 Mr. Barney of conspiracy to murder officers and employees of
20 the United States, as charged in Count 12.

21 Seventeen. We, the jury, find the Defendant Lonnie G.
22 Vernon guilty of conspiracy to murder officers and employees of
23 the United States, as charged in Count 12 of the indictment.

24 Eighteen. We, the jury, find the Defendant Coleman L.
25 Barney not guilty of carrying a firearm, that is, a

1 semiautomatic assault rifle, during and in relation to a crime
2 of violence, that is, the conspiracy charged in Count 12, as
3 charged in Count 13 of the indictment.

4 Nineteen. We, the jury, find the Defendant Lonnie G.
5 Vernon not guilty of carrying a firearm, that is, a
6 semiautomatic assault rifle, during and in relation to a crime
7 of violence, that is, the conspiracy charged in Count 12, as
8 charged in Count 14 of the indictment.

9 Twenty. We, the jury, find the Defendant Francis
10 Schaeffer Cox not guilty of carrying a firearm, that is, a
11 handgun, during and in relation to a crime of violence, that
12 is, the conspiracy charged in Count 12, as charged in Count 15
13 of the indictment.

14 Twenty-one. We, the jury, find the Defendant Francis
15 Schaeffer Cox guilty of solicitation of others, that is, the
16 Defendants Barney and Vernon and others, to engage in the
17 murder of an officer of the United States, as charged in Count
18 16 of the indictment.

19 It's dated this date and signed by (states name of
20 juror no. 6) as presiding juror.

21 Now I'm going to poll the jury and ask each of you in
22 turn if these are all your verdicts and if they are the
23 verdicts of the jury.

24 THE CLERK: Use a microphone, please.

25 THE COURT: Pardon me?

1 THE CLERK: I'm having them use the microphone. It's
2 going to start with juror number 1, probably.

3 THE COURT: Okay. (States name), are these your
4 verdicts?

5 JUROR NO. 1: Yes, Your Honor, they are.

6 THE COURT: I'm sorry, I didn't hear you.

7 JUROR NO. 1: Yes, Your Honor.

8 THE COURT: And are they the verdicts of the jury?

9 JUROR NO. 1: Yes, they are.

10 THE COURT: (States name), are these your verdicts?

11 JUROR NO. 2: Yes, Your Honor.

12 THE COURT: Are they the verdicts of the jury?

13 JUROR NO. 2: Yes, sir.

14 THE COURT: (States name), are these your verdicts?

15 JUROR NO. 3: Yes, sir.

16 THE COURT: Are they the verdicts of the jury?

17 JUROR NO. 3: Yes, sir.

18 THE COURT: (States name), are these your verdicts?

19 JUROR NO. 4: Yes, Your Honor.

20 THE COURT: Are they the verdicts of the jury?

21 JUROR NO. 4: Yes, they are, sir.

22 THE COURT: And (states name), are these your verdicts?

23 JUROR NO. 5: Yes, Your Honor.

24 THE COURT: Are they the verdicts of the jury?

25 JUROR NO. 5: Yes.

1 THE COURT: (States name), are these your verdicts?

2 JUROR NO. 6: Yes, Your Honor.

3 THE COURT: Are they the verdicts of the jury?

4 JUROR NO. 6: Yes, sir.

5 THE COURT: (States name), are these your verdicts?

6 JUROR NO. 7: Yes, they are, Your Honor.

7 THE COURT: Are they the verdicts of the jury?

8 JUROR NO. 7: Yes, they are.

9 THE COURT: If you'll pass that back to (states name),
10 please. And (states name), are these your verdicts?

11 JUROR NO. 8: Yes, they are, Your Honor.

12 THE COURT: Are they the verdicts of the jury?

13 JUROR NO. 8: Yes, they are.

14 THE COURT: (States name), are these your verdicts?

15 JUROR NO. 9: Yes, they are, Your Honor.

16 THE COURT: Are they the verdicts of the jury?

17 JUROR NO. 9: Yes.

18 THE COURT: (States name), are these your verdicts?

19 JUROR NO. 10: Yes, Your Honor.

20 THE COURT: Are they the verdicts of the jury?

21 JUROR NO. 10: Yes, Your Honor.

22 THE COURT: (States name), are these your verdicts?

23 JUROR NO. 11: Yes, Your Honor.

24 THE COURT: Are they the verdicts of the jury?

25 JUROR NO. 11: Yes, Your Honor.

1 THE COURT: And (states name), are these your verdicts?

2 JUROR NO. 12: Yes, Your Honor.

3 THE COURT: Are they the verdicts of the jury?

4 JUROR NO. 12: Yes.

5 THE COURT: All right. It appears that the verdicts
6 are unanimous and the verdict form will be filed.

7 DEFENDANT COX: The prosecutors withheld evidence from
8 you guys.

9 THE COURT: You -- Mr. Cox, please. Now, ladies and
10 gentlemen, there are -- the next stage in this is that I must
11 set a date for sentencing of the defendants and also order a
12 presentence report for each defendant to be submitted to the
13 Court that will advise the Court about the background of the
14 defendants and how the sentencing guidelines apply and will
15 make recommendations to the Court. And that takes about 90
16 days. And I will set sentencing for September 14th unless
17 somebody tells me that's an impossible day. I'll probably be
18 up here anyway on other matters that -- about that time. So is
19 that agreeable to everybody? September 14th? That of course
20 can be changed, should it be necessary for one or more
21 defendants.

22 MS. LAMOUREUX: That's fine for the government, Your
23 Honor.

24 THE COURT: Any objection to that?

25 MS. HADEN: Your Honor, we'll probably file something

1 with the Court regarding that date.

2 THE COURT: Well, I'm going to set that date and order
3 presentence reports at this time for each defendant. And that
4 also gives ample time for any posttrial matters that may be
5 appropriate.

6 And the -- you can -- if you're interested in the
7 sentencing process, folks, you can inquire of the Clerk's
8 Office if you wish to attend sentencing, to be sure that it
9 will in fact be held on that day.

10 Now, ladies and gentlemen, a couple of things you need
11 to know about. First, there has been a lot of publicity about
12 this case and a lot of public interest, as the number of
13 spectators in court might indicate. You are now free of your
14 obligation not to discuss the case with other people. But --

15 MS. LAMOUREUX: Your Honor?

16 THE COURT: -- you're not required to --

17 MS. LAMOUREUX: I apologize for interrupting. I --
18 before we discharge the jury, there were seven forfeiture
19 allegations in the indictment. I didn't know if the Court
20 wanted to inquire --

21 THE COURT: We dealt with those, it's my understanding
22 as to be not jury issues.

23 MS. LAMOUREUX: Okay.

24 THE COURT: And anyway, there is interest in the case.
25 You're free to discuss the case with anyone that wants to talk

1 with you about it, but you don't have to. And if anyone
2 approaches you and asks you -- wants to talk to you about the
3 case, if you are willing, you're free to do that. If you
4 choose not to, you can just tell them, "I choose not to discuss
5 it." And move on, and they should not press inquiry. But
6 members of the press may be interested in talking with you and
7 also counsel may be interested in talking with you about the
8 case. And you're free to do that if you choose to.

9 Now, you know, folks, I -- I've been at this a long
10 time, as you know. And I commented to counsel while we were
11 taking care of your earlier response that I do not recall a
12 jury ever in a complicated case like this being as engaged and
13 as involved in paying attention and making notes and trying to
14 understand everything in the evidence as it came in. And I
15 just have generally the highest regard for American juries, and
16 I want you to know that I think you've just done your duty as
17 you see it and have done it as well as one could hope in coming
18 to conclusions on the issues presented to you.

19 Jury service is one of the highest forms of citizenship
20 duties that we ask of citizens. And you have served your
21 country well by doing this job over the last many weeks. So I
22 personally thank you and I know all the lawyers join me in
23 expressing their thanks to you. And that's about all I've got
24 for you, except to send you home, with our thanks. You may be
25 excused.

1 (Jury not present at 3:21 p.m.)

2 THE COURT: As to those forfeiture count -- forfeiture
3 allegations or whatever, I understood when we started the case
4 that you had resolved that as to be not a jury issue and we
5 bypassed it throughout the trial. I don't know what has to be
6 done in that regard now. I don't know if you have agreed on
7 everything or that should be done by motion, or what.

8 MS. LAMOUREUX: We'll work with defense counsel and
9 submit -- we'll submit something in writing after we've
10 conferred with defense counsel, Your Honor.

11 THE COURT: Okay, that's fine. Okay. The defendants
12 are remanded to custody, subject to further order. Should
13 there be any requests in that regard, we'll deal with it. And
14 thank you --

15 THE CLERK: Judge --

16 THE COURT: -- all.

17 THE CLERK: -- Denali, over here. What time are we
18 setting those sentencings for on the 14th?

19 THE COURT: 9:30.

20 THE CLERK: For all three?

21 THE COURT: Yeah.

22 THE CLERK: Okay. Thank you.

23 THE COURT: At this time, at least.

24 THE CLERK: Okay. All rise. This matter is now
25 adjourned. This court is adjourned, subject to call.

1 (Proceedings concluded at 3:22 p.m.)
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1 CERTIFICATE

2 I certify that the foregoing is a correct transcript from the
3 electronic sound recording of the proceedings in the above-
entitled matter.

4 s/Teresa K. Combs 8/13/13
5 Teresa K. Combs, Transcriber Date

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